

AMENDED IN ASSEMBLY APRIL 19, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 810

Introduced by Assembly Members Parra and McCarthy
(Coauthors: Senators Ashburn and Florez)

February 18, 2005

An act to add and repeal Sections 17053.62, 17255.5, 23662, and 24356.5 of the Revenue and Taxation Code, relating to taxation, to Sections 17052.7, 17257, 23643, and 24356.4 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 810, as amended, Parra. Income and corporation taxes: environmental credit: deduction: ultra-low sulfur diesel fuel.

The Personal Income Tax Law and the Corporation Tax Law authorize various deductions and credits in computing the taxes imposed by those laws.

This bill would, under both laws, *in specified conformity with the federal income tax laws*, for taxable years beginning on or after January 1, ~~2006, and before January 1, 2012~~ 2003, allow an environmental tax credit in an amount equal to 5¢ for each gallon of ultra-low sulfur diesel fuel produced by a small refiner, as defined, at any facility located in this state.

This bill would also, under both laws, *in specified conformity with the federal income tax laws*, for a period beginning on January 1, ~~2005~~ 2003, and ending on January 1, 2009, authorize a small refiner to elect to treat 75% of qualified capital costs, as defined, as expenses not chargeable to capital account and expenses that may be deducted, as provided.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 17052.7 is added to the Revenue and*
2 *Taxation Code, to read:*

3 *17052.7. (a) For each taxable year beginning on or after*
4 *January 1, 2003, there shall be allowed as a credit against the*
5 *“net tax” an amount equal to the federal credit computed in*
6 *accordance with Section 45H of the Internal Revenue Code, as*
7 *modified by the American Jobs Creation Act of 2004 (Public Law*
8 *108-357).*

9 *(b) For purposes of this section, “a facility of a small business*
10 *refiner” shall include only facilities located within California.*

11 *(c) In the case where the credit allowed under this section*
12 *exceeds the “net tax,” the excess may be carried over to reduce*
13 *the “net tax” for the succeeding years.*

14 *(d) No deduction shall be allowed, as otherwise provided in*
15 *this part, for that portion of the expenses otherwise allowable as*
16 *a deduction for the taxable year which is equal to the amount of*
17 *the credit allowed for the taxable year under this section.*

18 *(e) The basis of any facility with respect to which a credit was*
19 *allowed under this section shall be reduced by the amount of the*
20 *credit attributable to that facility. The credit adjustment shall be*
21 *made for the taxable year for which the credit is allowed.*

22 *(f) No credit may be claimed under this section with respect to*
23 *any amount for which any other credit has been claimed under*
24 *this part.*

25 *SEC. 2. Section 17257 is added to the Revenue and Taxation*
26 *Code, to read:*

27 *17257. Section 179B of the Internal Revenue Code, relating*
28 *to deduction of qualified capital costs incurred by a small*
29 *business refiner in complying with Environmental Protection*
30 *Agency sulfur regulations, shall apply to items placed in service*
31 *by the refiner on or after January 1, 2003.*

32 *SEC. 3. Section 23643 is added to the Revenue and Taxation*
33 *Code, to read:*

23643. (a) For each taxable year beginning on or after January 1, 2003, there shall be allowed as a credit against the “net tax” an amount equal to the federal credit computed in accordance with Section 45H of the Internal Revenue Code, as modified by the American Jobs Creation Act of 2004 (Public Law 108-357).

(b) For purposes of this section, “a facility of a small business refiner” shall include only facilities located within California.

(c) In the case where the credit allowed under this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” for the succeeding years.

(d) No deduction shall be allowed, as otherwise provided in this part, for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit allowed for the taxable year under this section.

(e) The basis of any facility with respect to which a credit was allowed under this section shall be reduced by the amount of the credit attributable to that facility. The credit adjustment shall be made for the taxable year for which the credit is allowed.

(f) No credit may be claimed under this section with respect to any amount for which any other credit has been claimed under this part.

SEC. 4. Section 24356.4 is added to the Revenue and Taxation Code, to read:

24356.4. Section 179B of the Internal Revenue Code, relating to deduction of qualified capital costs incurred by a small business refiner in complying with Environmental Protection Agency sulfur regulations, shall apply to items placed in service by the taxpayer on or after January 1, 2003.

SEC. 5. The Legislature finds and declares that the application of this act to taxable years beginning on or after January 1, 2003, serves a public purpose by ensuring fair and consistent application of federal and state tax laws.

~~SECTION 1. Section 17053.62 is added to the Revenue and Taxation Code, to read:~~

~~17053.62. (a) For each taxable year beginning on or after January 1, 2006, and before January 1, 2012, there shall be allowed as an environmental tax credit against the “net tax,” as defined by Section 17039, an amount equal to five cents (\$0.05)~~

1 for each gallon of ultra-low sulfur diesel fuel produced during the
2 taxable year by a small refiner at any facility located in this state.

3 ~~(b) The aggregate credit determined under subdivision (a) for~~
4 ~~any taxable year with respect to any facility shall not exceed 25~~
5 ~~percent of the qualified capital costs incurred by the small refiner~~
6 ~~with respect to that facility, reduced by the aggregate credits~~
7 ~~determined under this section for all prior taxable years with~~
8 ~~respect to that facility.~~

9 (c) For purposes of this section:

10 (1) “Small refiner” means any refiner who owns or operates a
11 refinery in California that:

12 (A) Has and at all times had since January 1, 1978, a crude oil
13 capacity of not more than 55,000 barrels per stream day.

14 (B) Has not been at any time since September 1, 1988, owned
15 or controlled by any refiner that at the same time owned or
16 controlled refineries in California with a total combined crude oil
17 capacity of more than 55,000 barrels per stream day.

18 (C) Has not been at any time since September 1, 1988, owned
19 or controlled by any refiner that at the same time owned or
20 controlled refineries in the United States with a total combined
21 crude oil capacity of more than 137,500 barrels per stream day.

22 (2) (A) “Qualified capital costs” means, with respect to any
23 facility, those costs paid or incurred during the applicable period
24 for items certified by the California Air Resources Board under
25 subparagraph (B) for compliance with the applicable EPA or
26 CARB regulations with respect to that facility, including, but not
27 limited to, expenditures for the construction of new process
28 operation units or the dismantling and reconstruction of existing
29 process units to be used in the production of ultra-low sulfur
30 diesel fuel, associated adjacent or offsite equipment (including
31 tankage, catalyst, and power supply), engineering, construction
32 period interest, site work, and permitting.

33 (B) (i) Before claiming a credit under this section, a small
34 refiner shall request from the California Air Resources Board a
35 certification that both of the following are true:

36 (I) That the items for which qualified capital costs were paid
37 or incurred are for compliance with the applicable EPA or CARB
38 regulations described in subparagraph (A).

39 (II) That the items for which qualified capital costs were paid
40 or incurred have been placed in service by the small refiner.

1 (ii) ~~The request described in clause (i) shall be in a form and~~
2 ~~contain sufficient information to allow the California Air~~
3 ~~Resources Board to determine that the items that are requested to~~
4 ~~be certified were placed in service for compliance with~~
5 ~~applicable EPA and CARB regulations, which information shall~~
6 ~~include the date on which the items were placed in service.~~

7 (C) ~~The California Air Resources Board shall make a~~
8 ~~determination regarding a request described in subparagraph (B)~~
9 ~~on or before 60 days after the request is submitted. If the board~~
10 ~~does not make a determination within this time period, the~~
11 ~~certification will be deemed to be granted.~~

12 (3) ~~“Facility” means a small refiner’s petroleum refinery~~
13 ~~located in the State of California that has incurred qualified~~
14 ~~capital costs to produce ultra-low sulfur diesel fuel.~~

15 (4) ~~“Applicable EPA regulations” means the Highway Diesel~~
16 ~~Fuel Sulfur Control Requirements of the Environmental~~
17 ~~Protection Agency.~~

18 (5) ~~“Applicable CARB regulations” means the Vehicular~~
19 ~~Diesel Fuel Sulfur Control Requirements of the California Air~~
20 ~~Resources Board (CARB) under Resolution 03-17.~~

21 (6) ~~“Applicable period” means, with respect to any facility, the~~
22 ~~period beginning on January 1, 2004, and ending on May 31,~~
23 ~~2007.~~

24 (7) ~~“Ultra-low sulfur diesel fuel” means both of the following:~~

25 (A) ~~Diesel fuel with a sulfur content of 15 parts per million or~~
26 ~~less.~~

27 (B) (i) ~~Subject to clause (ii), either of the following:~~

28 (I) ~~Vehicular diesel fuel produced and sold by a small refiner~~
29 ~~on or after June 1, 2006.~~

30 (II) ~~Vehicular diesel fuel produced and sold by the small~~
31 ~~refiner before June 1, 2006, that the small refiner specifically~~
32 ~~identifies and supports through internal test reports as meeting~~
33 ~~applicable CARB regulations.~~

34 (ii) ~~For purposes of this section, it is rebuttably presumed that~~
35 ~~the fuel described in clause (i) is ultra-low sulfur diesel fuel. The~~
36 ~~California Air Resources Board may rebut this presumption by~~
37 ~~demonstrating that the fuel does not comply with applicable~~
38 ~~CARB regulations.~~

39 (8) ~~“Barrels per stream day” means the maximum number of~~
40 ~~barrels of input that a distillation facility can process within a~~

1 ~~24-hour period when running at full capacity under optimal crude~~
2 ~~and product slate conditions with no allowance for downtime.~~

3 ~~(d) For purposes of this section, if a credit is determined under~~
4 ~~this section for any expenditure with respect to any property, the~~
5 ~~increase in basis of that property that would (but for this~~
6 ~~subdivision) result from that expenditure shall be reduced by the~~
7 ~~amount of the credit so determined.~~

8 ~~(e) No deduction shall be allowed for that portion of the~~
9 ~~expenses otherwise allowable as a deduction for the taxable year~~
10 ~~that is equal to the amount of the credit determined for the~~
11 ~~taxable year under this section.~~

12 ~~(f) In the case where the credit allowed by this section exceeds~~
13 ~~the “net tax,” the excess may be carried over to reduce the “net~~
14 ~~tax” in the following year, and the six succeeding years if~~
15 ~~necessary, until the credit is exhausted.~~

16 ~~(g) If a small refiner that claims a credit under this section~~
17 ~~sells, transfers, or otherwise disposes of, either directly or~~
18 ~~indirectly, a facility within five years of the taxable year during~~
19 ~~which it first claimed the credit, there shall be added to the “net~~
20 ~~tax” of the small refiner during the taxable year of sale, transfer,~~
21 ~~or disposition an amount equal to the total credit claimed~~
22 ~~multiplied by a fraction, the numerator of which is the remaining~~
23 ~~term of five years and the denominator of which is 5.~~

24 ~~(h) This section is repealed on January 1, 2013.~~

25 ~~SEC. 2. Section 17255.5 is added to the Revenue and~~
26 ~~Taxation Code, to read:~~

27 ~~17255.5. (a) A small refiner (as defined in Section 17053.62)~~
28 ~~may elect to treat 75 percent of qualified capital costs (as defined~~
29 ~~in paragraph (2) of subdivision (c) of Section 17053.62) for items~~
30 ~~that are placed in service by the taxpayer during the taxable year~~
31 ~~as expenses that are not chargeable to capital account. Any cost~~
32 ~~so treated shall be allowed as a deduction for the taxable year in~~
33 ~~which paid or incurred.~~

34 ~~(b) (1) For purposes of this part, the basis of any property~~
35 ~~shall be reduced by the portion of the cost of that property taken~~
36 ~~into account under subdivision (a).~~

37 ~~(2) For purposes of Section 1245 of the Internal Revenue~~
38 ~~Code, and corresponding section of the Revenue and Taxation~~
39 ~~Code, the amount of the deduction allowable under subdivision~~
40 ~~(a) with respect to any property which is of a character subject to~~

1 ~~the allowance for depreciation shall be treated as a deduction~~
2 ~~allowed for depreciation under Section 167 of the Internal~~
3 ~~Revenue Code, or the corresponding section of the Revenue and~~
4 ~~Taxation Code.~~

5 ~~(e) This section is repealed on January 1, 2009.~~

6 ~~SEC. 3. Section 23662 is added to the Revenue and Taxation~~
7 ~~Code, to read:~~

8 ~~23662. (a) For each taxable year beginning on or after~~
9 ~~January 1, 2006, and before January 1, 2012, there shall be~~
10 ~~allowed as an environmental tax credit against the "tax," as~~
11 ~~defined by Section 23036, an amount equal to five cents (\$0.05)~~
12 ~~for each gallon of ultra-low sulfur diesel fuel produced during the~~
13 ~~taxable year by a small refiner at any facility located in this state.~~

14 ~~(b) The aggregate credit determined under subdivision (a) for~~
15 ~~any taxable year with respect to any facility shall not exceed 25~~
16 ~~percent of the qualified capital costs incurred by the small refiner~~
17 ~~with respect to that facility, reduced by the aggregate credits~~
18 ~~determined under this section for all prior taxable years with~~
19 ~~respect to that facility.~~

20 ~~(c) For purposes of this section:~~

21 ~~(1) "Small refiner" means any refiner who owns or operates a~~
22 ~~refinery in California that:~~

23 ~~(A) Has and at all times had since January 1, 1978, a crude oil~~
24 ~~capacity of not more than 55,000 barrels per stream day.~~

25 ~~(B) Has not been at any time since September 1, 1988, owned~~
26 ~~or controlled by any refiner that at the same time owned or~~
27 ~~controlled refineries in California with a total combined crude oil~~
28 ~~capacity of more than 55,000 barrels per stream day.~~

29 ~~(C) Has not been at any time since September 1, 1988, owned~~
30 ~~or controlled by any refiner that at the same time owned or~~
31 ~~controlled refineries in the United States with a total combined~~
32 ~~crude oil capacity of more than 137,500 barrels per stream day.~~

33 ~~(2) (A) "Qualified capital costs" means, with respect to any~~
34 ~~facility, those costs paid or incurred during the applicable period~~
35 ~~for items certified by the California Air Resources Board under~~
36 ~~subparagraph (B) for compliance with the applicable EPA or~~
37 ~~CARB regulations with respect to that facility, including, but not~~
38 ~~limited to, expenditures for the construction of new process~~
39 ~~operation units or the dismantling and reconstruction of existing~~
40 ~~process units to be used in the production of ultra-low sulfur~~

~~1 diesel fuel, associated adjacent or offsite equipment (including
2 tankage, catalyst, and power supply), engineering, construction
3 period interest, site work, and permitting.~~

~~4 (B) (i) Before claiming a credit under this section, a small
5 refiner shall request from the California Air Resources Board a
6 certification that both of the following are true:~~

~~7 (I) That the items for which qualified capital costs were paid
8 or incurred are for compliance with the applicable EPA or CARB
9 regulations described in subparagraph (A).~~

~~10 (II) That the items for which qualified capital costs were paid
11 or incurred have been placed in service by the small refiner.~~

~~12 (ii) The request described in clause (i) shall be in a form and
13 contain sufficient information to allow the California Air
14 Resources Board to determine that the items that are requested to
15 be certified were placed in service for compliance with
16 applicable EPA and CARB regulations, which information shall
17 include the date on which the items were placed in service.~~

~~18 (C) The California Air Resources Board shall make a
19 determination regarding a request described in subparagraph (B)
20 on or before 60 days after the request is submitted. If the board
21 does not make a determination within this time period, the
22 certification will be deemed to be granted.~~

~~23 (3) "Facility" means a small refiner's petroleum refinery
24 located in the State of California that has incurred qualified
25 capital costs to produce ultra-low sulfur diesel fuel.~~

~~26 (4) "Applicable EPA regulations" means the Highway Diesel
27 Fuel Sulfur Control Requirements of the Environmental
28 Protection Agency.~~

~~29 (5) "Applicable CARB regulations" means the Vehicular
30 Diesel Fuel Sulfur Control Requirements of the California Air
31 Resources Board (CARB) under Resolution 03-17.~~

~~32 (6) "Applicable period" means, with respect to any facility, the
33 period beginning on January 1, 2004, and ending on May 31,
34 2007.~~

~~35 (7) "Ultra-low sulfur diesel fuel" means both of the following:~~

~~36 (A) Diesel fuel with a sulfur content of 15 parts per million or
37 less.~~

~~38 (B) (i) Subject to clause (ii), either of the following:~~

~~39 (I) Vehicular diesel fuel produced and sold by a small refiner
40 on or after June 1, 2006.~~

1 ~~(H) Vehicular diesel fuel produced and sold by the small~~
2 ~~refiner before June 1, 2006, that the small refiner specifically~~
3 ~~identifies and supports through internal test reports as meeting~~
4 ~~applicable CARB regulations.~~

5 ~~(ii) For purposes of this section, it is rebuttably presumed that~~
6 ~~the fuel described in clause (i) is ultra-low sulfur diesel fuel. The~~
7 ~~California Air Resources Board may rebut this presumption by~~
8 ~~demonstrating that the fuel does not comply with applicable~~
9 ~~CARB regulations.~~

10 ~~(8) “Barrels per stream day” means the maximum number of~~
11 ~~barrels of input that a distillation facility can process within a~~
12 ~~24-hour period when running at full capacity under optimal crude~~
13 ~~and product slate conditions with no allowance for downtime.~~

14 ~~(d) For purposes of this section, if a credit is determined under~~
15 ~~this section for any expenditure with respect to any property, the~~
16 ~~increase in basis of that property that would (but for this~~
17 ~~subdivision) result from that expenditure shall be reduced by the~~
18 ~~amount of the credit so determined.~~

19 ~~(e) No deduction shall be allowed for that portion of the~~
20 ~~expenses otherwise allowable as a deduction for the taxable year~~
21 ~~which is equal to the amount of the credit determined for the~~
22 ~~taxable year under this section.~~

23 ~~(f) In the case where the credit allowed by this section exceeds~~
24 ~~the “tax,” the excess may be carried over to reduce the “tax” in~~
25 ~~the following year, and the six succeeding years if necessary until~~
26 ~~the credit is exhausted.~~

27 ~~(g) If a small refiner that claims a credit under this section~~
28 ~~sells, transfers, or otherwise disposes of, either directly or~~
29 ~~indirectly, a facility within five years of the taxable year during~~
30 ~~which it first claimed the credit, there shall be added to the “tax”~~
31 ~~of the small refiner during the taxable year of sale, transfer, or~~
32 ~~disposition an amount equal to the total credit claimed multiplied~~
33 ~~by a fraction, the numerator of which is the remaining term of~~
34 ~~five years and the denominator of which is 5.~~

35 ~~(h) This section is repealed on January 1, 2013.~~

36 ~~SEC. 4. Section 24356.5 is added to the Revenue and~~
37 ~~Taxation Code, to read:~~

38 ~~24356.5. (a) A small refiner (as defined in Section 23662)~~
39 ~~may elect to treat 75 percent of qualified capital costs (as defined~~
40 ~~in paragraph (2) of subdivision (c) of Section 23662) for items~~

1 that are placed in service by the taxpayer during the taxable year
2 as expenses that are not chargeable to capital account. Any cost
3 so treated shall be allowed as a deduction for the taxable year in
4 which paid or incurred.

5 (b) (1) For purposes of this part, the basis of any property
6 shall be reduced by the portion of the cost of that property taken
7 into account under subdivision (a).

8 (2) For purposes of Section 1245 of the Internal Revenue
9 Code, and corresponding section of the Revenue and Taxation
10 Code, the amount of the deduction allowable under subdivision
11 (a) with respect to any property which is of a character subject to
12 the allowance for depreciation shall be treated as a deduction
13 allowed for depreciation under Section 167 of the Internal
14 Revenue Code, or the corresponding section of the Revenue and
15 Taxation Code.

16 (c) This section is repealed on January 1, 2009.

17 SEC. 5.

18 SEC. 6. This act provides for a tax levy within the meaning
19 of Article IV of the Constitution and shall go into immediate
20 effect.